

MEETINGS, HEARINGS AND DUE PROCESS

Section 4

Meetings vs. Hearings

Meetings

Legislative Hearings

Quasi-judicial Hearings

What happens...

- Discuss business or take action
- Generally legislative

- Receive public comment on a course of action (e.g. a plan or bylaw update)

- Hear arguments from parties seeking board approval

Who does it...

- ALL boards

- The Planning Commission
- Selectboard

- Any board that reviews proposed development

Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

- Post advance notice
- **Make the agenda available before the meeting**
 - At the municipality
 - 2 other designated places
 - A Web site, if your town has one
- Let the public participate
- **Make the minutes available within five days**
- **Address complaints of violations**

www.vlct.org/vermont-local-government/vermont-open-meeting-law/

Public Notice

Meetings

- For regular meetings: 1 VSA §§310-314
- At least 48 hours*
- At town and 2 other places

Legislative Hearings

- For plans and bylaw amendments
- 15 days notice
- Newspaper of record
- 3 or more public places
- Copy of bylaws 15 days prior
- Copy of plan 30 days prior

Quasi-Judicial Hearings

- For development review
- 7/15 days notice**
- Newspaper**
- 3 or more public places
- Mailed to applicants and adjoiners
- Posting within view of nearest public ROW

Legislative Hearings

- To receive public comment on proposed plans, bylaw, and policies.
- Public notice is mandatory:
 - Plans: 24 VSA §§4384-4385
 - Bylaws: 24 VSA §§4441-4442
- At least two public hearings
 - Planning Commission public hearing (preparation)
 - Selectboard public hearing(s) (adoption)
- Make summary of plan/bylaw available in notice

Quasi-Judicial Hearings (24 V.S.A. §4464)

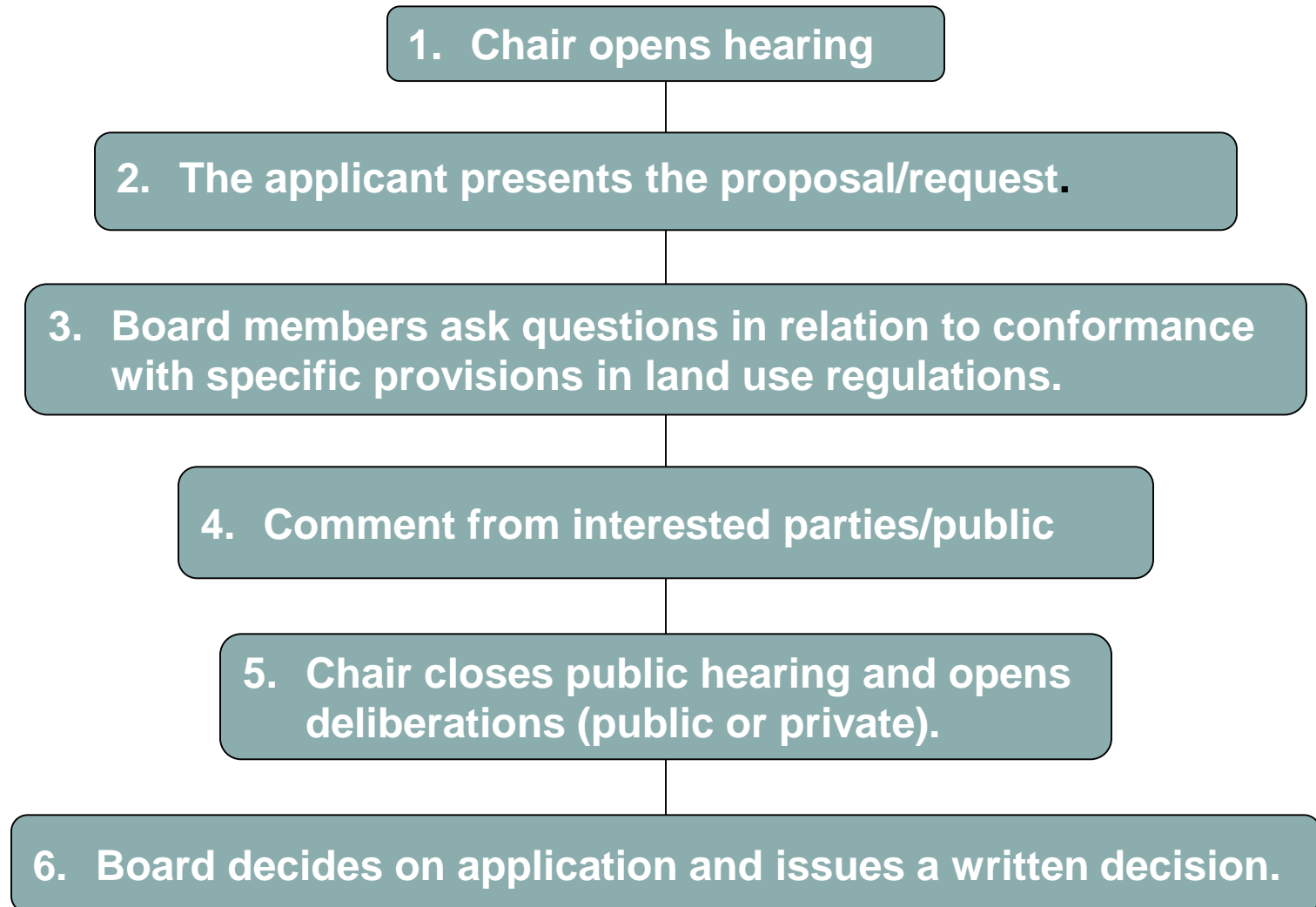
Conditional
Use Review,
Subdivision
Review,
Appeals

- 15 days' notice in the newspaper
- 3 or more public places
- Mailed to applicants and adjoining
- Posting within view of nearest ROW

Site Plan
Review

- Seven days' notice
- 3 or more public places
- Mailed to applicants and adjoining
- Posting within view of nearest ROW

Flow of Quasi-Judicial Public Hearing



Opening a Quasi-Judicial Hearing

1. Review order of events
2. Remind of the importance of order
3. Make copies of the **rules of procedure and ethics policies** available.
4. Review definition of **interested persons** and ensure documentation of participants. Administer oath.
5. Request disclosure of **conflicts of interests or ex parte communications**

Board Member Role at Quasi-Judicial Hearing

In order to determine a project's conformance with your regulations and protect due process:

- Listen to Testimony and Evidence;
- Ask Questions;
- Refer to your regulations;
- Avoid conflicts of interest;
- Must not prejudge a matter or publicly express opinions on a pending case.

Deliberative Session

- Exempt from Open Meeting Law
- No requirement for notice or minutes
- Don't have to reveal how the board voted
- Public or private
- 45 days to issue a decision or deemed approved
- Hold hearing open until satisfied that all information is provided

Conflicts of Interest

- Financial interest
(direct or indirect)
- Personal interest (direct or indirect)
- Known bias or prejudice
- Ex parte communication
- Appearance of a conflict of interest

It takes years to build trust with the public, but just one misstep to destroy it.

Managing Conflicts of Interest

- Adopt Rules of Procedure and Ethics – know them and follow them!
- Ex parte communication is very difficult to avoid, so ALWAYS disclose
- Recuse oneself when necessary
- Use alternates

Recusal
vs.
Abstention

Constitutional Due Process

- Parties have a property right protected by the Constitution
- Parties include applicant and interested persons
- “. . . No state shall deprive any person of life, liberty, or property, without due process of law . . .”
- 14th Amendment to U.S. Constitution

In Summary: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- A fair hearing presenting all sides of the issue
- Impartial standards for decision making
- Accurate and accessible public records
- Decision makers acts without bias
- MUST adopt rules of procedure and ethics (24 V.S.A. §4461)

QUESTIONS?



Tools and Resources Available:

- Essentials of Local Land Use Planning and Regulation Manual (online at VPIC.info).
- Purple Book – Title 24, Chapter 117 V.S.A. and other land use relevant statute as amended through 2012 (online at VPIC.info).
- Title 24, Chapter 117, V.S.A, current and up to date: www.leg.state.vt.us/statutes
- Land Use Planning Implementation Manual (online at VPIC.info).
- Your local Regional Planning Commission: www.vapda.com
- www.vpic.info – Vermont Planning Information Center (VPIC)
- www.vlct.org – Vermont League of Cities and Towns (VLCT)
- www.accd.vermont.gov/strong_communities – Department of Housing and Community Development